

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)

IB Docket No. 96-111

Amendment of the Commission's Regulatory)
Policies to Allow Non-U.S.-Licensed Space)
Stations to Provide Domestic and International)
Satellite Services In the United States)

and)

Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
Eliminate the Licensing Requirement for)
Certain International Receive-Only Earth)
Stations)

CC Docket No. 93-23
RM-7931

and)

COMMUNICATIONS SATELLITE)
CORPORATION)
Request for Waiver of Section 25.131(j)(1))
of the Commission's Rules as it Applies to)
Services Provided via the Intelsat K Satellite)

File No. ISP-92-007

To: The Commission

COMMENTS OF TRW INC.

TRW Inc. ("TRW"), by counsel and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby comments on the Commission's Further Notice of Proposed Rulemaking, FCC 97-252, slip op. (released July 18, 1997) in the above-captioned proceedings ("Further Notice"). In this connection, TRW notes that it has been

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an active participant in these proceedings for some time. See, e.g., Comments of TRW Inc., July 15, 1996; Reply Comments of TRW Inc., August 16, 1996.

Since many of the positions presented in these earlier filings remain equally pertinent to the refinements sought in the Further Notice — for example, the recommendation against the re-licensing of space segment, the use of the Earth station licensing process as the principal means for regulating entry by foreign licensed systems, and the expansion of the “no special concessions” policy to such systems ^{1/}-- TRW will limit its present comments to one particular area of direct and continuing concern. This involves the U.S. regulatory treatment of affiliates of the Intergovernmental Satellite Organizations (“IGO”).

DISCUSSION

At paragraph 34 of the Further Notice, although noting that it initially proposed to treat affiliates of IGOs “as we would treat any other non-U.S. satellite system,” the Commission warns again “that the treaty-based heritage of and possible government ownership in these affiliates could also result in privileged or exclusive access to national markets around the world and thereby diminish effective competition in

^{1/} It is TRW’s understanding that these earlier submissions will be considered by the Commission along with the additional views submitted in response to the current Further Notice.

the U.S. market.” (Footnote omitted) Thus, in the Further Notice, although proposing “not to apply an ECO-Sat test to applications to use satellites of IGO affiliates if the affiliates are companies of WTO-members,” the Commission continues to recognize that “the unique relationship between intergovernmental satellite organizations and their affiliates provides an opportunity for behavior that could pose a very high risk to competition in satellite services to, from, and within the United States.”^{2/} It was for this reason, explains the Commission, that “in the WTO negotiations, the United States preserved its ability to protect competition in the U.S. market, including the possibility of not granting market access to a *future* privileged IGO affiliate.” (Id.; emphasis added) Indeed, referring to a letter sent to various separate system operators by the United States Trade Representative, the Commission notes that the administration “will not permit market access to a *future* privatized affiliate, subsidiary, or other form of spin-off from an IGO that would likely lead to anticompetitive results.”^{3/}

As a result of the foregoing, the Commission concludes in the Further Notice (§ 36) that “upon appropriate application, we propose to review the affiliate’s relationship to its IGO parent to ensure that grant would not pose a significant risk to

^{2/} Further Notice at ¶ 35.

^{3/} Id., emphasis added, citing Letter from Charlene Barshefsky, U.S. Trade Representative-Designate to Ken Gross, President and Chief Operating Officer, Columbia Communications Corporation (February 12, 1997) (hereinafter “USTR Letter”).

competition in the U.S. satellite market, and that the affiliate is structured to prevent such practices as collusive behavior, cross-subsidization, and denial of market access, and that the affiliate does not benefit directly or indirectly from IGO privileges and immunities.” Finally, the Commission notes that this position is “consistent with the Reference Paper, which allows us to maintain appropriate measures to prevent major suppliers from engaging in anticompetitive practices, including cross-subsidization.”^{4/} TRW agrees with the Commission’s assessment of the inherent risk to competition engendered by the presence of IGO affiliates in the marketplace.

TRW must respectfully disagree, however, with the Commission’s apparent conclusion that merely because the WTO Basic Telecom Agreement becomes effective January 1, 1998, its responsibility to evaluate the significant public interest ramifications of IGO related presence in the market should arise only in connection with requests to use satellites of *future* IGO affiliates.^{5/} Neither the effective date of the WTO Basic Agreement, nor the USTR Letter, offer any rational basis for applying differing treatment to *existing* as opposed to *future* IGO affiliates. The serious concerns expressed by the Commission in the Further Notice with respect to the potential influence and market distortions occasioned by the IGOs treaty based privileges and long-standing monopoly-

^{4/} Further Notice at ¶ 36, citing Reference Paper at 1.2.

^{5/} Further Notice at ¶ 36.

based arrangements are not made irrelevant simply by the passage of a single point in time.

First, the effective date of the Basic Telecom Agreement has nothing to do with how, and on what basis, similarly situated non-U.S. entities — in this case, IGO affiliates — should be distinguished, and hence treated for regulatory purposes, once the Agreement takes effect.^{6/} And although the USTR Letter (at 2) does state that the USTR has “made it clear to all our negotiating partners in the WTO that the United States will not grant market access to a *future* privatized affiliate, subsidiary or other form of spin-off from the ISOs, that would likely lead to anticompetitive results” (emphasis added), it says nothing about what the United States position was, or is, or should be, with respect to *existing* IGO affiliates. It simply is silent on the matter. Importantly, however, the USTR Letter goes on to point out — irrespective of the temporal status of the license applicant — that “[e]xisting U.S. communications and antitrust law, regulation, policy and practice will continue to apply to license applicants if a GBT deal goes into effect.” (Id.)^{7/}

^{6/} And the Commission offers no rational view to the contrary.

^{7/} Indeed, Section 1.1 of the WTO Reference Paper requires its member governments to maintain “appropriate measures ... for the purpose of preventing suppliers who, *alone or together*, are a major supplier from engaging in or continuing anticompetitive practices.” (Emphasis added)

As TRW has pointed out previously, so many fundamental ties remain between Inmarsat and its existing spin-off, ICO Global Communications, that the two constitute virtually one and the same entity.^{8/} The potential for market distortion and anticompetitive effects is just as great with the existing Inmarsat affiliate as it would be with any prospective Intelsat spin-off that has yet to occur, and the Commission's well founded concerns for the effects on the public interest are equally applicable to both.

An article in today's Communication's Daily, highlights the need for such "public interest" assessment of existing IGO affiliates such as ICO:

"Indonesian government will require that foreign satellite operators seeking market entry there partner with state-owned PT Indosat in service offerings, *Jakarta Post* reported. Policy applies to fixed and mobile services. Newspaper said: 'the involvement of private operators in the Indonesian basic telecommunications industry will only be permitted on condition that such firms cooperate with state-owned companies under a joint operation, joint venture or management agreement.'"

PT Indosat is the Indonesian participant-owner in ICO and now, by virtue of government fiat, will determine what private competitors, if any, will gain access to the potentially large Indonesian market for mobile satellite services. This is precisely the type of "privileged or exclusive access to national markets" that the Commission has continued to express concern would "diminish effective competition in the U.S. market." (Further Notice at ¶ 34.)

^{8/} See, e.g., Petition to Deny of TRW Inc., File No. 106-SAT-MISC-95 (filed June 23, 1995) and Reply of TRW Inc., File No. 106-SAT-MISC-95 (filed August 31, 1995).

No application has yet been filed to provide U.S. service using ICO space segment. When one is, it should be evaluated in the same manner as any other affiliate of an IGO — the date of ICO's incorporation in the Cayman Islands is simply irrelevant to this determination.

There is little question that, as presently structured and organized, Intelsat and Inmarsat have almost overwhelming inherent advantages over newer private competitors. This is due not only to their treaty-based privileges and immunities, but to the substantial ownership in these entities held by numerous market-dominant carriers (many government owned) in nations throughout the world.^{9/} Assessing the impact on competition of such unique privileges and relationships using traditional economic measures of market power or openness will be difficult, but the current or future existence of the IGO affiliate is not a relevant basis to ignore such impact.

CONCLUSION


As discussed above and in its initial Comments and Reply Comments, TRW urges the Commission to adopt the regulatory framework that TRW has proposed for

^{9/} Significantly, in this respect, a majority of ICO's voting stock is held by governments, Inmarsat, and companies which are themselves controlled by their respective governments.

entry into the United States market by non-U.S. satellite systems owned or operated by any affiliate of an Intergovernmental Satellite Organization.

Respectfully submitted,

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